

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In re Applications of)
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COMCAST CORPORATION)
and subsidiaries) MB DOCKET NO. 02-70
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and)
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AT&T COMCAST CORPORATION)
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For Transfer of Control)
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AT&T CORP.)
and subsidiaries)
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AT&T COMCAST CORPORATION)
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For Transfer of Control)
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TO: Chief, Media Bureau

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APR 29 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION TO DENY

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GLORIA MARIE MITCHELL TAYLOR,
ZELDA TEPPER AND PATRICK YOUNG**

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SUMMARY

This case is about a conscience-shocking discriminatory practice, made possible by the actions and omissions of AT&T Broadband at the highest levels, which so grievously violates the Communications Act and distorts the operation of the free market that no application involving AT&T Broadband can be approved without full review of the facts by an administrative law judge, as Congress requires.

As we will demonstrate, 47 U.S.C. §309(e) requires a hearing when there are substantial and material questions of fact which, if proven, would compel the disqualification of one or both applicants or of the transaction. Petitioners, citizens of Marietta, Georgia who were falsely imprisoned through the conduct of AT&T, are keenly aware that the Commission prefers disputes that are purely "private" in nature to be litigated in other forums besides the FCC. And to be sure, some of plaintiffs' individual grievances -- particularly the personal injuries they suffered by being falsely arrested for "watching television while Black" -- can be redressed in state court. This petition is being brought, however, because some of petitioners' injuries, and the injuries of other AT&T Broadband subscribers in Georgia and across the United

States, cannot be remedied by a state court in Georgia. In particular, the misdeeds complained of here are not a frolic of a local official in a small cable system. Rather, they are the direct and entirely predictable consequence of AT&T Broadband's absence of any national policy which, if it existed and were implemented with a minimum degree of seriousness and professionalism, would have made the events described in this petition impossible.

Furthermore, at no time in the state court litigation has AT&T Broadband defended itself by maintaining that the actions taken by its Atlanta-area system were entirely *ultra vires* and were the fruits of a direct refusal to observe national company policy. Indeed, so far as we know, none of those responsible, including the leading officials of the AT&T Broadband in Georgia who knew of or should have known of, acquiesced in, or approved these actions, have been fired. Thus, AT&T Broadband has sent a signal to its managers everywhere that if they condone or participate in this kind of misconduct, AT&T Broadband will protect and defend and will not punish them or hold them accountable.

Consequently, AT&T Broadband, as a corporate actor, places in jeopardy the personal dignity, privacy, employability of its viewers on no basis other than that

they live in an area occupied entirely by low and middle income African Americans and Hispanics, or that they themselves are African American or Hispanic.

Thus, petitioners come to the Commission not only as individually injured parties but as television viewers asking the Commission to do what the Communications Act of 1934, as amended, requires it to do in order to specifically deter further misconduct by AT&T Broadband and generally deter similar misconduct by others in the cable industry.

The Commission is required by its own policies and by appellate case precedent to hold a hearing in this case. In an analogous context, the Commission expressly reserves to itself the right to investigate and pursue violations of employment discrimination, e.g. when they are very numerous or shock the conscience.

The DC Circuit has said that intentional discrimination almost surely disqualifies a company from holding an FCC authorization.

In particular, AT&T's misconduct must be dealt with by the FCC, because the failure to do so will inevitably distort the market in three ways: (1) allowing abuses against minorities and economically unequal persons to continue in an unfettered manner; (2) discouraging

minorities and the poor from subscribing to cable or multichannel programming at all; and/or (3) coercing them to subscribe to one multichannel provider rather than others. In all cases, coercion rather than the operation of a free market will determine subscribership. This decidedly is not in the public interest, convenience or necessity.

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TO: Chief, Media Bureau

PETITION TO DENY

Lisa Burton, Carmen (Robinson) Gonzalez, Betty Maina, Tracey Massay, Osmisa Peacock, Kizzie Sanders, Anthony Scott, Deborah Maria Shepherd, Maria Smith, Gloria Marie Mitchell Taylor, Zelda Tepper and Patrick Young, all citizens of the State of Georgia (collectively referred to as "Petitioners"), by their attorneys, and pursuant to Section 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §309(d), hereby respectfully submit

their "Petition to Deny" against all of the applications in the above-entitled docket, and respectfully request that the Commission dismiss, deny or designate for hearing all said applications. In support whereof, the following is shown:

I. Preliminary Statement

1. By public notice, DA 02-733, released March 29, 2002, the Commission gave public notice of the filing of the above-captioned applications, and allowed interested parties until and including April 29, 2002 to file comments or petitions to deny.

2. As will be demonstrated below, all twelve Petitioners have standing to contest the merger of AT&T Corp.'s "broadband division" ("AT&T") and Comcast Corporation ("Comcast") into AT&T Comcast Corporation ("ATTCC"). As will be shown below, AT&T and its subsidiaries committed racially discriminatory acts with respect to Petitioners, engaged in unfair trade practices against Petitioners, and generally perpetrated "hate crimes" against Petitioners. Thus, AT&T and subsidiaries lack the character qualifications required of Commission licensees. The public interest, convenience and necessity would not be served by Commission consent to this merger.

II. Standing

3. Other than Carmen Gonzalez, who is a Hispanic American, each of the Petitioners is an African American who reside or resided variously in two rental apartment complexes in Marietta, Cobb County, Georgia, known as Natchez Trace and Hidden Glen. The Natchez Trace and Hidden Glen apartment complexes receive cable television service from subsidiaries of AT&T known as AT&T BROADBAND OF GEORGIA I, LLC, a Georgia limited liability company, AT&T BROADBAND OF GEORGIA II, LLC, a Georgia limited liability company and AT&T BROADBAND PHONE OF GEORGIA, LLC, a limited liability company incorporated outside the state of Georgia. The facts as to each individual Petitioner are related below. "Declarations Under Penalty of Perjury" executed in accordance with Section 1.16 of the Commission's Rules from each Petitioner are appended hereto as Exhibits A-L, inclusive.

4. It is well settled that viewers or listeners have standing to file petitions against broadcast stations serving their homes. See *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1002 (D.C.Cir.1966). Clearly, as individuals whose homes are passed by the cables and wires of the cable television service provided by AT&T and/or its subsidiaries,

Petitioners have standing to file a formal "Petition to Deny" against the above-captioned applications.

III. Factual Allegations

5. **Summary.** All twelve Petitioners were grievously harmed by AT&T and/or its subsidiaries. On or about April 26, 2001, AT&T, through its agents, including a James Phillips, instigated the criminal prosecutions of Petitioners maliciously and without any probable cause. AT&T instigated the prosecutions by filing criminal reports with the Marietta Police Department and/or other local police and law enforcement agencies within Cobb County, in which reports AT&T wrongfully alleged that Petitioners were in receipt of AT&T furnished cable television services without authorization and in violation of O.C.G.A. § 46-5-2(a).

6. Astoundingly, AT&T issued these reports without ever verifying whether Petitioners' apartments were even physically connected to, otherwise equipped with, or even able to receive cable television service. For example, AT&T, after maliciously having Petitioner Osmisa Peacock arrested and jailed, admitted that, "**There is no way this person could have had cable prior to today. I had to run a new line in order to hook up service.**" A genuine, true, and correct copy of AT&T's Sales Order Form dated August 5,

2001, is attached hereto as Exhibit M.

7. Similarly, AT&T issued these false reports without ever verifying whether, in fact, Petitioners were customers of AT&T authorized to receive AT&T cable television services. For example, AT&T never even reviewed its customer billing records before filing the criminal reports, which would have revealed that Ms. Gonzalez was, in fact, a customer of AT&T who had ordered and paid for AT&T cable television services prior to April 26, 2001. A genuine, true, and accurate copy of Ms. Gonzalez's check paying for the installation of cable television service, which check was negotiated by AT&T, is attached hereto as Exhibit N.

8. In addition, AT&T filed the criminal reports without determining if Petitioners were even persons with a legal interest in the properties alleged to be illegally receiving cable television services. For example, Petitioners Taylor and Young were merely guests at two such properties, but were nevertheless wrongfully accused by AT&T of intentionally receiving said illegal cable television service at properties in which Petitioners Taylor and Young had no legal interest or control.

9. Furthermore, AT&T filed the criminal reports despite the fact that several Petitioners were paid

subscribers to DirecTV and/or Dish Network (or other such similar satellite television services), and had, therefore, no interest in or knowledge of whether cable services were even being furnished to their apartments. Petitioners Scott and Tepper are two such persons.

10. By filing the criminal reports, AT&T caused the Marietta Police Department and/or other local police and law enforcement agencies within Cobb County to obtain arrest warrants for the arrest of Petitioners, which arrest warrants were executed by said police agencies on or about May 15, 2001 and June 22, 2001.

11. By filing the criminal reports, AT&T maliciously caused without probable cause criminal prosecutions to be instigated against Petitioners, which prosecutions terminated in favor of Petitioners.

12. After a jury acquitted Ms. Gonzalez of AT&T's baseless charges of stealing cable, following deliberations of only sixteen (16) minutes, AT&T and its agent Phillips continued to insist that the Cobb County Solicitor General's Office prosecute the remaining above-named Petitioners. The Cobb County Solicitor General, however, declined to do so and dismissed the charges against the remaining Petitioners. AT&T's conduct, in this regard, further demonstrated AT&T's malice towards Petitioners.

13. As set forth more fully below, AT&T's malicious prosecutions constituted racial discrimination against Petitioners and unfair trade practices generally. As a result of AT&T's hard-hearted, ham-fisted and illegal conduct, Petitioners suffered actual economic damages, past, present, and future, including lost employment/wages, lost employment opportunities, fright, invasion of privacy, disruption to peace and happiness, embarrassment and humiliation in front of their children, friends and neighbors, anxiety, deprivation of liberty, wrongful arrest and detention, legal expenses and fees incurred in prevailing in the criminal prosecutions.

14. Here are the facts concerning each individual Petitioner.

15. Lisa Burton. Ms. Burton resides at 1205 Natchez Trace, Apartment A, Marietta, Cobb County, Georgia 30008 and has resided at that apartment since November, 2000.

16. When Ms. Burton moved to her apartment in November, 2000, she realized that her apartment had television cable service through AT&T. During the same month, she called AT&T to notify AT&T to disconnect the cable service, but AT&T failed to do so.

17. From the time Ms. Burton has lived in her apartment, she has watched little television. On or about

May 10, 2001, a representative of AT&T came to Burton's home to disconnect her cable television service. Two days later, a representative of AT&T came to her home to try to get her to subscribe to the cable service. Several days later, on or about May 15, 2001, a deputy sheriff from the Cobb County Sheriff's Department came to Ms. Burton's home and told Ms. Burton's twelve year old son that he had an arrest warrant for his mother for alleged theft of cable television service.

18. On or about May 16, 2001, Ms. Burton went to the Cobb County Sheriff's Department to find out whether there was an arrest warrant for her. She was told that there was such a warrant. A Cobb County Corrections Officer then took Ms. Burton into custody at 5:00 p.m. on May 16, 2001, at which time she had to relinquish all of her possessions to the Officer. Also, the Officer imprisoned her in a holding cell at the Cobb County Adult Detention Center and kept her there until 4:00 a.m. on May 17, 2001, for a total of eleven hours. The Officer informed Ms. Burton that she had to stay in the holding cell until another officer brought the arrest warrant to the Cobb County Adult Detention Center. Ms. Burton was not released from the holding cell until her mother wire transferred funds to post a bond with the Cobb County Sheriff's Department.

19. Ms. Burton's two children, ages twelve and three, had to take care of themselves for an entire evening while she was in the holding cell.

20. On October 12, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), inasmuch as there was "insufficient evidence to prove guilt beyond a reasonable doubt." Despite Ms. Burton's innocence in this matter, she has a permanent record of her arrest on the National Crime Information Center ("NCIC") and Georgia Crime Information Center ("GCIC") databases.

21. Carmen (Robinson) Gonzalez. Ms. Gonzalez resided at 1305 Natchez Trace, Apartment D, Marietta, Cobb County, Georgia 30008 between February 24, 2001 (on or about) and early 2002, when she relocated to the State of New Jersey. When she moved to the Natchez Trace complex, no cable television service was being provided to her unit at the time. Accordingly, she telephoned AT&T, told AT&T that she desired to purchase cable television service, and AT&T informed her that AT&T would send an installer to furnish her apartment with such service.

22. AT&T missed its first installation appointment, and, due to this failure, agreed to waive the installation charge and to initially invoice Ms. Gonzalez in the amount

of \$40.45. At the rescheduled installation, on or about March 8, 2001, Ms. Gonzalez meet with AT&T's installer and furnished him with a check payable to AT&T in the amount of \$40.45. Significantly, AT&T negotiated said check and retained the funds. Despite the foregoing, AT&T failed to invoice Ms. Gonzalez for said service in April or May, 2001. Upon noting in late April, 2001, that no invoice had been sent to her by AT&T, Ms. Gonzalez attempted to make several phone calls to AT&T to discuss AT&T's apparent oversight. However, due to the extreme difficulty encountered while attempting to navigate AT&T's customer service phone system and to thereby speak directly with an AT&T customer representative, Ms. Gonzalez was never able to discuss AT&T's invoicing oversight with any AT&T representative in April, 2001.

23. On or about May 10, 2001, during the hours of 8:00 p.m. through 12:30 a.m., AT&T, including its agent Phillips, accompanied and directed Marietta Police Officer Robinson (hereinafter "Officer Robinson") to various apartment units at the Natchez Trace apartments, that AT&T alleged were illegally receiving AT&T cable television service. Significantly, Officer Robinson, who is a physically imposing man, approximately 6'7" in height and who weighs in excess of 300 lbs., did not wear any uniform

identifying him as a law enforcement officer. Nor were any marked police vehicles present in the parking lot of the apartment complex, which would have otherwise signaled the presence of the police to the apartment tenants. In addition, AT&T's agent Phillips, who is also physically intimidating, attempted to videotape the apartment residents in nighttime dress without her permission and/or knowledge, during AT&T's interrogation of the residents.

24. On this same evening, at 11:45 p.m., AT&T directed Officer Robinson to the apartment occupied by Ms. Gonzalez. Ms. Gonzalez, who was recently divorced at the time, lived by herself within the apartment, had already dressed for bed, was hesitant to open the door to what appeared to be complete strangers at 11:45 p.m. Officer Robinson explained that he was a police officer with the Marietta Police Department, and that accompanying him were AT&T officials, including Phillips, and that according to AT&T Ms. Gonzalez was illegally and without authorization receiving cable television service from AT&T. In response, Ms. Gonzalez explained that she was a customer of AT&T, and that she had paid for and was properly receiving cable television service from AT&T. Ms. Gonzalez further explained that she would call AT&T the next day to clear up any discrepancy in the information that AT&T had provided

to Officer Robinson.

25. Nevertheless, AT&T disconnected Ms. Gonzalez's cable television service that same evening. The very next day, on May 11, 2001, Ms. Gonzalez called AT&T, and after eventually gaining direct access to an AT&T representative, inquired regarding AT&T's erroneous statements to the Marietta police regarding her customer status and requested that AT&T correct such erroneous information with the police and reconnect her cable service - - which AT&T immediately agreed to do. Despite AT&T's promise to correct the false information that it had provided to the Marietta police department, it, in fact, failed to do so.

26. On or about May 15, 2001, based on the erroneous information provided by AT&T, the Marietta police along with other local law enforcement agencies obtained an arrest warrant for Ms. Gonzalez and subsequently arrested Ms. Gonzalez at her apartment. She was handcuffed in front of her neighbors and placed in a Sheriff's vehicle for transport to the Cobb County Adult Detention Center. At the Detention Center, she was searched and then placed in a holding cell and kept there from 9:40 p.m. until 3:00 a.m. on May 16, 2001. Ms. Gonzalez was required to post a cash bond in order to ransom her freedom from the Detention Center.

27. Ms. Gonzalez was arraigned in August or September, 2001. Despite being provided documented evidence prior to trial that Ms. Gonzalez was a paying customer of AT&T, AT&T and its agent Phillips continued to pressure the Cobb County Solicitor General's Office to accuse and prosecute the AT&T based charges against Ms. Gonzalez. Ms. Gonzalez was required at her own expense to hire counsel to defend her at, and suffer the embarrassment and anxiety of, a public criminal jury trial based on AT&T's false charges of illegally receiving AT&T cable television service.

28. Ms. Gonzalez was fully acquitted of all such charges following a two (2) day trial on or about September 4, 2001, after only sixteen (16) minutes of jury deliberation. Despite her innocence, Ms. Gonzalez has a permanent record of her arrest on the NCIC and GCIC databases.

29. **Betty Maina**. Ms. Maina resides at 1228 Natchez Trace, Apartment C, Marietta, Cobb County, Georgia 30008 and has resided at that apartment since April, 2000. Ms. Maina has never had cable television through AT&T or any other service provider.

30. On or about May 10, 2001, Officer Robinson from the Marietta Police Department came to Ms. Maina's

apartment. Ms. Maina was not at home, but a guest was there at the time. The guest was dressed for bed and alone. Officer Robinson, who did not have a search warrant, attempted to badger Ms. Maina's guest for consent to search the apartment in the presence of AT&T's agent Phillips. This sequence was videotaped by Phillips.

31. On or about May 15, 2001, Ms. Maina learned that a warrant for her arrest had been taken out based on AT&T's false charges that she had illegally received cable television service. Upon learning that Officer Robinson had apparently sought to arrest her, Ms. Maina, who was out of the State of Georgia at the time, spoke on the telephone with Officer Robinson, who advised her to turn herself in. On June 15, 2001, upon returning to the State of Georgia, Ms. Maina went to the Cobb County Adult Detention Center to verify that an arrest warrant had been taken out against her by AT&T. She was informed that such a warrant had been taken, and was immediately arrested and placed in a holding cell for approximately four hours. She had to post a cash bond to be released from prison.

32. Ms. Maina attended an arraignment in August or September, 2001. On October 12, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), based on the fact

that there was "insufficient evidence to prove guilt beyond a reasonable doubt."

33. Despite her innocence, Ms. Maina has a permanent record of her arrest on the NCIC and GCIC databases.

34. Tracey Massay. Ms. Massay resides at 1354 Natchez Trace, Apartment D, Marietta, Cobb County, Georgia 30008 and has resided there since January, 2001. Ms. Massay, who did not have a television until mid-February, after one was given to her as a gift, connected her television antenna to the outlet to assist with reception. Ms. Massay, who spent a significant amount of time at her mother's house, as opposed to her own, did not watch much television. Her prior experience with cable television service included such service as a covered utility.

35. On or about May 10, 2001, during the hours of 8:00 p.m. through 12:30 a.m., AT&T, including its agent Phillips, accompanied and directed Officer Robinson to various apartment units at the Natchez Trace apartments, that AT&T alleged were illegally receiving AT&T cable television service. On this evening, AT&T directed Officer Robinson to the apartment leased by Ms. Massay. Officer Robinson explained that he was a police officer with the Marietta Police Department, and that accompanying him were AT&T officials, including Phillips, and that according to

AT&T Ms. Massay was illegally and without authorization receiving cable television service from AT&T.

In response she explained that she was not receiving cable television service and that AT&T and Officer Robinson were welcome to verify the same. AT&T and Phillips stated that they understood and, after examining Ms. Massay's apartment, Phillips further stated that AT&T representatives would return and explain the various sign-up options available to Ms. Massay if she was interested in signing-up for AT&T.

36. Despite Phillips' representation that an AT&T salesperson would be sent, instead, on or about May 15, 2001, a Deputy Sheriff of the Cobb County Sheriff's Department knocked on Ms. Massay's apartment door with a warrant for her arrest for alleged theft of telecommunications services. Ms. Massay, who had just returned from a job fair in Atlanta, was then arrested in front of her friends and neighbors. She was taken to the Cobb County Adult Detention Center, searched, and placed in a holding cell for over six (6) hours. She was not released until her parents pledged their own house as collateral for a bond.

37. An AT&T representative subsequently came to Ms. Massay's apartment to sign her up for cable television

service.

38. Ms. Massay attended an arraignment in August or September, 2001. On October 16, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), based on the fact that there was "insufficient evidence to prove guilt beyond a reasonable doubt." Despite her innocence, Ms. Massay has a permanent record of her arrest on the NCIC and GCIC databases.

39. Osmisa Peacock. Ms. Peacock resides at 2300 Hidden Glen Drive, Marietta, Cobb County, Georgia 30067, and has resided at that apartment since February, 2001. She never knew whether cable television was available, or even used such service, in her apartment. Instead, for television entertainment, Ms. Peacock viewed movies on her VCR.

40. On or about June 12, 2001, AT&T, including its agent Phillips, Officer Robinson, and other representatives acting at the behest of AT&T, came to Ms. Peacock's home and accused her of illegally receiving cable television service. Officer Robinson did not present Ms. Peacock with any warrant. Phillips attempted to videotape Ms. Peacock's apartment. Ms. Peacock informed AT&T and Officer Robinson that, to her knowledge, Ms. Peacock did not have cable

television, as she never watched over-the-air television and only viewed VCR movies for television entertainment.

41. Approximately ten days later, a Deputy Sheriff of the Cobb County Sheriff's Department presented Ms. Peacock with a warrant for her arrest for alleged theft of telecommunications services, doing so in the presence of Ms. Peacock's three (3) young children. She was taken by the Deputy Sheriff to a nearby building, handcuffed together with two or three other persons, and placed in a patrol car. Ms. Peacock and the others were kept in the police car for approximately forty-five (45) minutes and then taken to the Cobb County Adult Detention Center. Ms. Peacock and the others were searched and placed in a holding cell; Ms. Peacock was kept there for 14-1/2 hours, from approximately 10:00 p.m. until the next day at 12:30 p.m. Ms. Peacock was required to pay for a bond to enable her to get released from the holding cell.

42. Ms. Peacock attended an arraignment in August or September, 2001. On October 16, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), based on the fact that there was "insufficient evidence to prove guilt beyond a reasonable doubt." Indeed, AT&T admitted that, "There is no way this person could have had cable prior to today. I

had to run a new line in order to hook up service." Despite the false arrest and imprisonment of Ms. Peacock instigated by AT&T and her indubitable innocence, she has a permanent record of her arrest on the NCIC and GCIC databases.

43. **Kizzie Sanders.** Ms. Sanders resides at 1852 Hidden Glen Drive, Marietta, Cobb County, Georgia 30067, and has resided at that apartment since February, 2001. After moving into the apartment, Ms. Sanders did not watch broadcast television and instead viewed movies on her VCR for in-home entertainment. Significantly, Ms. Sanders has never had or utilized any antenna or other similar device to facilitate the receipt of broadcast television programming at her apartment.

44. On or about June 12, 2001, local law enforcement authorities along with AT&T, including its agent Phillips, interrogated a visiting family member of Ms. Sanders in her absence regarding Ms. Sanders' television viewing habits. Phillips videotaped this interrogation. AT&T entered Ms. Sanders' apartment, without her permission, and videotaped various portions of the house. With respect to a second television in Ms. Sanders' bedroom, that Ms. Sanders used with her VCR to watch movies in private (when her children were at home), AT&T's Phillips, after turning on the second

set, commented, "does [Ms. Sanders] watch snow all day," as only snow and no broadcast television was displayed.

45. On or about June 22, 2001, a Deputy Sheriff of the Cobb County Sheriff's Department knocked on Ms. Sanders' apartment door, and, after she answered, the Deputy Sheriff stated that she was under arrest for cable theft. Ms. Sanders informed and indicated to the Deputy Sheriff that absolutely no cable television service existed within the house, and requested that the Deputy verify the same by turning on the television. The Deputy responded that he was not interested in her story, but had already received "enough information" from AT&T to arrest her. He then arrested and placed Ms. Sanders in handcuffs. She was then chained together with fellow Petitioner Zelda Tepper in front of Ms. Sanders' friends and neighbors, and placed in a patrol car. Ms. Sanders was kept in the police car for approximately forty-five (45) minutes and then taken to the Cobb County Adult Detention Center. Ms. Sanders was then searched and placed in a holding cell, where she was imprisoned from approximately 9:00 p.m. until the next morning at 5:30 a.m. on June 23, 2001. Ms. Sanders was required to have a bond posted to enable her to get released from the holding cell, and paid \$150.00. for the same.

46. Ms. Sanders attended an arraignment in August or September, 2001. On November 12, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), based on the fact that there was "insufficient evidence to prove guilt beyond a reasonable doubt." Despite her false arrest and imprisonment instigated by AT&T and her innocence, Ms. Sanders has a permanent record of her arrest on the NCIC and GCIC databases.

47. Anthony Scott. Mr. Scott resides at 1228 Natchez Trace, Apartment B, Marietta, Cobb County, Georgia 30008, and has resided at that apartment since August, 1998. Mr. Scott started with television cable service through Media One (a predecessor of AT&T). He paid a monthly amount for the service. After Media One merged with AT&T, Mr. Scott began receiving incorrect bills for large sums of money. He contacted AT&T to notify the company of the incorrect bills to no avail. Mr. Scott therefore terminated his cable television service and relinquished possession of AT&T's cable box to a AT&T representative during the latter part of 2000. Between November, 2000, and March, 2001, Mr. Scott had no cable television service.

48. In March or April, 2001, Mr. Scott obtained satellite television service through Direct TV. At the end

of May, 2001, he learned from neighbors that Cobb County Sheriff's Department officials had come to his home. In or about May, 2001, Mr. Scott went to the Cobb County Adult Detention Center on County Services Road to verify that an arrest warrant had been taken out against him based on false charges asserted by AT&T for alleged cable theft. Upon arriving at the Center, he was arrested and placed in "the bullpen" at the Detention Center for five or six hours. Mr. Scott had to post a cash bond of \$1,500 with the Cobb County Sheriff's Department to be released from the Detention Center.

49. Mr. Scott attended an arraignment in August or September, 2001. On October 10, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), due to the fact that there was "insufficient evidence to prove guilt beyond a reasonable doubt." Despite the false arrest and imprisonment of Mr. Scott instigated by AT&T and his indubitable innocence, he has a permanent record of his arrest on the NCIC and GCIC databases.

50. Deborah Maria Shepherd. Ms. Shepherd resides at 1205 Natchez Trace, Apartment C, Marietta, Cobb County, Georgia 30008, and has resided at that apartment since October, 2000. After moving into the apartment, her son plugged the television antenna into what she understood to

be a direct antenna feed. She noticed various advertisements for AT&T cable television services, but also noted that she was not receiving any "premium" programming on her television (e.g., the HBO Channel). She called AT&T to determine whether she was, in fact, receiving AT&T cable television service or whether her television service was the result of a direct antenna feed. AT&T stated that it would investigate whether cable service was being provided to Ms. Shepherd, and if so, would disconnect the same. AT&T never called Ms. Shepherd to inform her of the results of its investigation.

51. Ms. Shepherd again called AT&T to inquire regarding the status of whether cable television service was being provided by AT&T, and, if so, that AT&T would disconnect the same. AT&T assured Ms. Shepherd that it was investigating whether cable television service was being provided by AT&T, and, if so, that AT&T would disconnect said service. On or about May 10, 2001, during the hours of 8:00 p.m. through 12:30 a.m., AT&T, including its agent Phillips, accompanied and directed Officer Robinson to various apartment units at the Natchez Trace apartments, that AT&T alleged were illegally receiving AT&T cable television service. During this operation, at approximately 9:47 p.m., AT&T directed Officer Robinson to

the apartment leased by Ms. Shepherd. Ms. Shepherd answered the door dressed in her nightgown. Officer Robinson explained that he was a police officer with the Marietta Police Department, and that accompanying him were AT&T officials, including Phillips, and that according to AT&T she was illegally and without authorization receiving cable television service from AT&T. Officer Robinson further explained that "AT&T knows that your t.v.'s on," and stepped into Ms. Shepherd's apartment doorway. Phillips then spoke into his radio and stated, "we have 1205 C." Officer Robinson and AT&T then left.

52. Ms. Shepherd, who suffers from asthma, sustained an asthma attack for much of the evening until the next morning following AT&T's interrogation.

53. On or about May 15, 2001, a Deputy Sheriff of the Cobb County Sheriff's Department knocked on Ms. Shepherd's apartment door with a warrant for her arrest for alleged theft of telecommunications services. Ms. Shepherd's eleven (11) year old son answered the door, as she was still at work, and was informed that the Sheriff's Department was there to arrest his mother. Ms. Shepherd's son then telephoned Ms. Shepherd and begged her not to return home, as the Sheriff's Department was there to arrest her.

54. Ms. Shepherd went to the Cobb County Adult Detention Center the next day to confirm whether, in fact, an arrest warrant had been taken out against her. She was told that such a warrant had been taken out against her by AT&T, and was arrested on the spot. She was then searched and placed in a holding cell, where she was imprisoned for approximately four (4) hours. She was required to post a cash bond in the amount of \$1,150.00 to be released from the holding cell. As the result of having to pay this high bail in order to ransom her own freedom, Ms. Shepherd was not able to timely pay many of her bills and expenses in May and June.

55. Ms. Shepherd attended an arraignment in August or September, 2001. On October 16, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), based on the fact that there was "insufficient evidence to prove guilt beyond a reasonable doubt."

56. Ms. Shepherd was fired from her sales and marketing job shortly after her arrest. She has been unable to find steady work at or even near the same rate of pay of her previous sales and marketing job, due to the fact that a permanent record of her arrest exists on the NCIC and GCIC databases, thanks to her false arrest and imprisonment instigated by AT&T.

57. Maria Smith. Ms. Smith resides at 2086 Hidden Glenn Drive, Marietta, Cobb County, Georgia 30067, and has resided at that apartment since March, 2001. Upon moving into the apartment, she did not watch much television, choosing instead to watch VCR movies. Ms. Smith's roommate connected the cable from Ms. Smith's television to the wall outlet, and discovered that cable service was being provided to the apartment. Ms. Smith called AT&T and stated that her apartment was receiving cable television service from AT&T, and that she wished to switch the cable service into her name. AT&T responded that it could not switch the service until the original subscriber called to transfer the service. AT&T maintained this position even though Ms. Smith explained that the "original subscriber" must have been the previous occupant of Ms. Smith's apartment (whose identity she did not know).

58. On or about June 8, 2001, AT&T, including its agent Phillips, Officer Robinson, and other representatives of AT&T, came to Ms. Smith's home late at night, after Ms. Smith had already gone to bed. Ms. Smith was told by her 14 year-old child that AT&T and Officer Robinson were demanding to speak with her. Officer Robinson did not present Ms. Smith with any warrant. Phillips attempted to videotape Ms. Smith's apartment, to which Ms. Smith

objected. Ms. Smith explained her recent communications with AT&T to Officer Robinson and to Phillips. Phillips indicated that AT&T would be in touch regarding the matter.

59. Approximately ten days later, a Deputy Sheriff of the Cobb County Sheriff's Department came to Ms. Smith's apartment and attempted to arrest her for alleged cable theft. Ms. Smith was not present at the time, but called the Sheriff's Department and inquired regarding their attempt to arrest her. She was told to report to the Cobb County Adult Detention Center, as AT&T had taken an arrest warrant out against her. Upon arriving at the Cobb County Adult Detention Center, she was placed under arrest, searched and imprisoned in a holding cell, where she was kept from approximately 2:30 p.m. until the next morning at 1:00 a.m. Ms. Smith was required to post a bond to enable her to get released from the holding cell.

60. Ms. Smith attended an arraignment in August or September, 2001. On November 14, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), based on the fact that there was "insufficient evidence to prove guilt beyond a reasonable doubt."

61. Despite her false arrest and imprisonment instigated by AT&T and her innocence, Ms. Smith has a

permanent record of her arrest on the NCIC and GCIC databases.

62. Gloria Marie Mitchell Taylor. Ms. Taylor resides as a guest at 1221 Natchez Trace, Apartment A, Marietta, Cobb County, Georgia 30008 and has resided as a guest at that apartment since April, 1998. Ms. Taylor's boyfriend, Willie Cobb, is the only person ever having a leasehold interest in or control over the apartment. Upon moving into the apartment, Ms. Taylor assisted Mr. Cobb in purchasing a "DirectTV" DBS system, to provide the apartment with television service. The "DirectTV" system was maintained by Mr. Cobb and enjoyed by Ms. Taylor for approximately three (3) years, until March, 2001, when Mr. Cobb cancelled his service agreement with "DirectTV".

63. During March and April, 2001, Mr. Cobb utilized a television antenna in obtaining over-the-air television service. In April, 2001, Ms. Taylor inquired on behalf of Mr. Cobb with AT&T regarding whether it was offering any promotional or trial period subscriber services, after Ms. Taylor's 11 year-old son indicated that the antenna provided a better picture when connected to the cable outlet within the apartment. AT&T informed Ms. Taylor that it did not believe that any such promotional services were being offered, but that it would verify the same since Ms.

Taylor was receiving cable service from AT&T. AT&T further indicated that it would disconnect the service if no promotional period were in effect.

64. On or about May 10, 2001, during the hours of 8:00 p.m. through 12:30 a.m., AT&T, including the indefatigable Phillips, accompanied and directed Marietta Police Officer Robinson to various apartment units at the Natchez Trace apartments, that AT&T alleged were illegally receiving AT&T cable television service. Significantly, Officer Robinson did not wear any uniform identifying him as a law enforcement officer. In addition, Phillips videotaped the apartment residents in nighttime dress during AT&T's interrogation of these residents. That evening after dark, AT&T directed Officer Robinson to the apartment where Ms. Taylor resided. Neither Mr. Cobb or Ms. Taylor were present, although Ms. Taylor's son (fourteen (14) years old at the time), answered the door. Officer Robinson explained that he was a police officer with the Marietta Police Department, and that accompanying him were AT&T officials, including Phillips, and that according to AT&T Ms. Taylor was illegally and without authorization receiving cable television service from AT&T. Ms. Taylor's son called Mr. Taylor on her cell phone as she was driving home from work, and reported that the police

and Phillips had come to the apartment accusing her of illegally receiving cable television service from AT&T.

65. When Ms. Taylor arrived at the apartment complex, Officer Robinson and Phillips confronted Ms. Taylor as she exited her vehicle. Ms. Taylor was accused of illegally obtaining cable television service from AT&T, and was further threatened that she would "hear from [AT&T] again." Ms. Taylor requested that Mr. Cobb, as the leaseholder of the apartment, again contact AT&T regarding the cable television service that it was providing to the apartment, to disconnect the service as AT&T had said that it would do if no promotional offer were in effect.

66. On or about May 15, 2001, a Deputy Sheriff of the Cobb County Sheriff's Department presented Ms. Taylor with a warrant for her arrest for alleged theft of telecommunications services. The Deputy Sheriff stated that "we have a warrant from AT&T cable." The Deputy Sheriff then arrested Ms. Taylor, handcuffing her in front of her family, then taking her to a nearby building, chaining Ms. Taylor together with two or three other persons in the parking lot of the apartment complex in front of all of her neighbors, and then placing her in a patrol car, where Ms. Taylor and others were kept for approximately forty-five minutes before being taken to the

Cobb County Adult Detention Center. There, Ms. Taylor and the others were searched and imprisoned in a holding cell. Ms. Taylor was incarcerated in the holding cell from approximately 6:30 p.m. until the next morning at 12:30 a.m. on May 16, 2001. Ms. Taylor was required to have a bond posted to ransom her freedom.

67. Ms. Taylor attended an arraignment in August or September, 2001. On October 12, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), based on the fact that there was "insufficient evidence to prove guilt beyond a reasonable doubt."

68. Ms. Taylor was fired from her job with a prominent bank shortly after her arrest. Thanks to the false arrest and imprisonment instigated by AT&T, she has been unable to find steady work at or even near the same rate of pay of her bank job; this is because a permanent record of her arrest exists on the NCIC and GCIC databases.

69. Zelda Tepper. Ms. Tepper currently resides at an apartment complex on Delk Road, Marietta, Cobb County, Georgia. She resided at 1846 Hidden Glen Drive, Marietta, Cobb County, Georgia 30067 from October, 1999, until July, 2001. When she moved to Hidden Glen Drive, she noticed that her television was connected to some cable television

service. After checking on rates with Media One, she decided to obtain service through DirecTV in November, 1999; and in that same month she began subscribing to television service through DirecTV.

70. On or about June 12, 2001, AT&T, including its agent Phillips, Officer Robinson, and other representatives of AT&T, came to Ms. Tepper's home and walked into her home without permission. Officer Robinson did not present Ms. Tepper with any warrant. Phillips videotaped each room of Ms. Tepper's apartment.

71. Approximately ten days later, a Deputy Sheriff of the Cobb County Sheriff's Department presented Ms. Tepper with a warrant for her arrest for alleged theft of telecommunications services, doing so in the presence of her family. She was taken by the Deputy Sheriff to a nearby building and, in front of her family and neighbors, chained together with two other persons, and placed in a patrol car, where she was kept for approximately forty-five minutes and then taken to the Cobb County Adult Detention Center. There, Ms. Tepper and the others were searched and placed in a holding cell, where she was imprisoned from approximately 8:00 p.m. until the next morning at 6:00 a.m. on June 23, 2001. Ms. Tepper's family posted a bond to ransom her freedom from the holding cell.

72. Ms. Tepper attended an arraignment in August or September, 2001. On November 12, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), based on the fact that there was "insufficient evidence to prove guilt beyond a reasonable doubt." Despite her false arrest and imprisonment instigated by AT&T and her indubitable innocence, Ms. Tepper has a permanent record of her arrest on the NCIC and GCIC databases.

73. Patrick Young. Mr. Young, along with his fiancé, resided as a guest at 2306 Hidden Glen Drive, Marietta, Cobb County, Georgia 30067, which apartment was leased by his sister.

74. On or about June 12, 2001, AT&T, including its agent Phillips, Officer Robinson, and other representatives of AT&T, came to the apartment at which Mr. Young was a guest. Officer Robinson did not present Mr. Young with any warrant. Mr. Young explained that he was not the lessee of the apartment, and requested that AT&T and the police return when his sister was at home. Phillips videotaped this conversation. Without a warrant and in the presence of AT&T, Officer Robinson demanded identification from Mr. Young and accused him of stealing cable television service.

75. Approximately ten days later, a Deputy Sheriff of the Cobb County Sheriff's Department presented Mr. Young

with a warrant for his arrest for alleged theft of telecommunications services. The Deputy Sheriff did so in the presence of Mr. Young's fiancé. Mr. Young was handcuffed by the Deputy Sheriff, and placed in a patrol car, where he was kept for approximately forty-five minutes and then taken to the Cobb County Adult Detention Center, where Mr. Young and the others were searched and placed in a holding cell. Mr. Young was imprisoned in the holding cell from approximately 7:00 p.m. until the next morning at 6:00 a.m. on June 23, 2001, when bond was posted in order to ransom his freedom from the holding cell.

76. Mr. Young attended an arraignment in August or September, 2001. On November 28, 2001, the State of Georgia entered an Entry of Nolle Prosequi as to AT&T's charge of allegedly violating O.C.G.A. § 46-5-2(a), based on the fact that there was "insufficient evidence to prove guilt beyond a reasonable doubt."

77. Despite his false arrest and imprisonment instigated by AT&T, Mr. Young, who is a graduate of Morehouse College and who is working on his Masters Degree at Clark University, now has a permanent record of his arrest on the NCIC and GCIC databases.

IV. Argument

A. Legal Background

78. The Commission was created by Congress, *inter alia*, for the following purposes (47 U.S.C. §151):

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, **without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges**... [emphasis supplied]

79. Pursuant to 47 U.S.C. §310(d), the Commission is required, as a regular part of its public interest analysis, to determine whether the transferees are qualified to hold Commission licenses and whether grant of the application would result in the violation of any Commission rules. With respect to the transferors, their qualifications are re-evaluated in the event that (1) issues related to their basic qualifications have been designated for hearing by the Commission or (2) issues have been sufficiently raised in petitions to warrant the designation of a hearing. *Voicestream Wireless Corporation or Omnipoint Corporation*, 15 FCC Rcd 3341, 3347, ¶13, n. 38 (2000), citing *Mobilemedia Corporation*, 14 FCC Rcd 8017, 8018, ¶4 (1999) (citing in turn *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D. C. Cir. 1964); see also Stephen F. Sewell, "Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934," 43 Fed. Comm. L.J. 277, 339-40 (1991).

80. It is clear that the Commission must make a statutory finding that an applicant before it possesses the requisite "character qualifications" to be a licensee. 47 U.S.C. §308(b). In broadcast and broadcast-related cases (47 U.S.C. §309), the FCC has stated that its character analysis would focus on "misconduct which violates the Communications Act or a Commission rule or policy, and ... certain specified non-FCC misconduct which demonstrate[s] the proclivity of an applicant to deal truthfully with the Commission and to comply with [its] rules and policies." *Statement of Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-91 (1986). In addition to serious violations of the Communications Act and/or the rules and regulations of the FCC, the Commission indicated that it would also consider non-broadcast misconduct in cases involving: fraudulent representations to government agencies, criminal false statements or dishonesty, and broadcast-related violations of antitrust laws or other laws concerning competition. *Id.*, 102 FCC 2d at 1195-1203.

81. It is well settled that a Commission licensee who engages in racially discriminatory conduct is inimical to the public interest and *prima facie* lacks the basic character qualifications to be a Commission licensee. *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126

(Rev. Bd. 1987); *Black Broadcasting Coalition of Richmond v. FCC*, 556 F.2d 59 (D. C. Cir. 1977). Indeed, the United States Court of Appeals for the District of Columbia Circuit has plainly stated:

The FCC's concerns, however, cannot be wholly prospective: in implementing its anti-discrimination policy, the Commission of necessity must investigate broadcasters' past employment practices. A documented pattern of intentional discrimination would put seriously into question a licensee's character qualifications to remain a licensee: intentional discrimination almost invariably would disqualify a broadcaster from a position of public trusteeship. Where responsible and well-pleaded claims of discrimination have been made, therefore, the FCC may be required to hold a hearing to resolve these charges before granting a license renewal.

Bilingual Bicultural Coalition on Mass Media v. FCC, 595 F.2d 621, 628-29 (D. C. Cir. 1978). And while the instant case involving AT&T deals with AT&T's unfair activities in depriving minority citizens of their liberty and civil rights rather than employment discrimination--the analogy is apt and clear--a discriminator is not entitled to hold an authorization from the Commission. Furthermore, the Commission has stated that it retains "expansive powers" to deal with discrimination. *Memorandum of Understanding between the Federal Communications Commission and the Equal Employment Opportunity Commission*, 70 FCC 2d 2320, ¶9 (1978).

82. It is well settled in communications law that a management-level employee's "gross misconduct and fraud . . .

. must be imputed to the licensee" because of the licensee's failure to exercise proper supervision over the station. *Continental Broadcasting, Inc. (WNJR)*, 15 FCC 2d 120, 14 RR 2d 813, 817 (¶7) (1968), *recons. den.* 17 FCC 2d 485, 16 RR 2d 30 (1969), *aff'd sub nom. Continental Broadcasting, Inc. v. FCC*, 439 F.2d 580, 20 RR 2d 2126 (D. C. Cir. 1971), *cert. den.*, 403 U.S. 905 (1971); *see also Eleven Ten Broadcasting Corp. (KRLA)*, 32 FCC 706, 22 RR 699 (1962), *aff'd sub nom. Immaculate Conception Church of Los Angeles v. FCC*, 320 F.2d 795, 25 RR 2128a (D. C. Cir. 1963), *cert. den.*, 375 U.S. 904 (1963); *KWK Radio, Inc.*, 34 FCC 1039, 1 RR 2d 457, 459-60 (¶5) (1963), *aff'd sub nom. KWK Radio, Inc. v. FCC*, 337 F.2d 540, 2 RR 2d 2071 (D. C. Cir. 1964), *cert. den.*, 380 U.S. 910 (1965). Therefore, the conduct of AT&T management and key employees (such as Mr. Phillips) is required to be imputed to AT&T.

83. Unfair trade practices are inimical to the public interest. The Commission has defined an "unfair trade practice" is one that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition, citing 15 U.S.C. § 45(n). *Joint FCC/FTC Policy Statement*, FCC 00-72, 2000 WL 232230 (March 1, 2000). Although the FCC is

not directly responsible for enforcing unfair trade practices laws and regulations, "the Commission must take into account the policies underlying the laws of antitrust and unfair competition". *RKO General, Inc.*, 78 FCC 2d 1, ¶58 (1980).

84. The Commission's current policy is "where an applicant has allegedly engaged in nonbroadcast misconduct 'so egregious as to shock the conscience and evoke almost universal disapprobation,' such conduct 'might be a matter of Commission concern even prior to adjudication by another body.'" *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 192 (D. C. Cir. 2001), and cases cited therein. Clearly, multichannel media provider conduct that is so egregious as to shock the conscience and evoke almost universal disapprobation must then also be grounds for the Commission to take action against AT&T and its subsidiaries.

B. Argument

85. AT&T and its subsidiaries lack the requisite character qualifications to be entitled to a grant of the above-captioned applications because AT&T engaged in a pattern of Gestapo-like terror against an African American community in the suburbs of Atlanta, which constituted both racial discrimination and unfair trade practices, in addition to non-broadcast tortuous conduct which has been

brought by Petitioners to the attention of the civil courts in Fulton County, Georgia¹.

86. AT&T, like other cable television companies, has an interest in stopping "cable piracy". However, "cable piracy" tends to occur at the hands of disgruntled former employees of AT&T (and other cable companies) who were cable installers and know how to "tap the cable", most of whom tend to be Caucasians, and most of whom tend to market their illegal services to white neighborhoods.

87. AT&T systematically went through two apartment complexes where the resident population was predominantly African American. It staged its "raids" at night, clearly to increase the "terror" factor on the residents of these complexes. While a by-product of these raids may have been to actually catch someone who had "tapped the cable" (which none of the raids produced), what it was calculated to do was to send a message to the African American population in the area, as follows—if you live on a street or in an apartment complex passed by the AT&T cable, and you are not a subscriber (even if you legitimately get your TV over-the-air or through DirecTV or Dish Network), you can expect a raid in the middle of the night, and then a visit from

¹*Lisa Burton et al v. AT&T Broadband of Georgia I LLC et al*, State Court of Fulton County, State of Georgia, Civil Action File No. 01-VS-026415B.

Cobb County law enforcement with an arrest warrant, and then an involuntary stay in the Cobb County prison until some kind of a ransom is paid. Then, your life will be ruined, as you will have an arrest record, and you will be unable to secure employment commensurate with your skills and abilities. What a great way to get new subscribers--the "five families" of New York were never quite this clever!!!!

88. AT&T is now asking the Commission to reward it for its novel business practices by granting the above-captioned applications in order to permit a massive cable combine to be known as "AT&T Comcast". If this happens, will other neighborhoods in other parts of the country have the same type of Gestapo tactics as we have seen in Cobb County, Georgia? Will "Watching Television While Black" become an actionable offense nationwide?

C. Remedy Sought

89. Petitioners seek that the Commission designate the above-captioned applications for appropriate hearing issues. It is respectfully submitted that there is a substantial and material question of fact as to whether AT&T possesses the requisite character qualifications that 47 U.S.C. §308(b) mandates the Commission to find. The appellate precedents require that a hearing be held. The

United States Court of Appeals for the District of Columbia Circuit has reversed the Commission on a number of occasions for failing to hold hearings in cases such as the instant case where substantial and material questions of fact as to the basic qualifications of applicants to be FCC licensees had been raised but not resolved. *Weyburn Broadcasting Limited Partnership v. FCC*, 984 F.2d 1220 (D. C. Cir. 1993); *David Ortiz Broadcasting Corp. v. FCC*, 941 F.2d 1253 (D. C. Cir. 1991); *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D. C. Cir. 1989); *Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D. C. Cir. 1988); and *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 59 RR 2d 249 (D. C. Cir. 1985).

90. *Citizens for Jazz* states the test: a petitioner need not demonstrate a fire to prove a fire, but need only demonstrate "a good deal of smoke" in order to obligate the Commission to hold a hearing on whether the fire exists. 775 F.2d at 397. *Citizens for Jazz* is good law in this Circuit, having been quoted with approval in the relatively recent case of *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D. C. Cir. 1998).

91. Therefore, Petitioners urge that the Commission designate the above-captioned applications on appropriate issues, including but not limited to the following:

(1) To determine whether AT&T and/or its subsidiaries, employees or agents engaged in racial discrimination against the residents of the Natchez Trace and Hidden Glen apartment communities in Cobb County, Georgia;

(2) To determine whether AT&T and/or its subsidiaries, employees or agents engaged in unfair trade practices by securing arrest warrants and maliciously prosecuting residents of the Natchez Trace and Hidden Glen apartment communities for not subscribing to AT&T cable television services; and

(3) In light of the facts and circumstances adduced pursuant to issues (1) and (2) above, whether AT&T Corporation and/or its subsidiaries possess the requisite character qualifications to be permitted to transfer control of their cable television system and related licenses and radio stations; and

(4) In light of the facts and circumstances adduced pursuant to issues (1), (2) and (3) above, whether the public interest, convenience and necessity would be served by a grant of the above-captioned applications.

V. Conclusion

WHEREFORE, Lisa Burton, Carmen (Robinson) Gonzalez, Betty Maina, Tracey Massay, Osmisa Peacock, Kizzie Sanders, Anthony Scott, Deborah Maria Shepherd, Maria Smith, Gloria Marie Mitchell Taylor, Zelda Tepper and Patrick Young urge that the above-captioned applications BE DENIED, DISMISSED OR DESIGNATED FOR HEARING upon the issues framed above and/or other appropriate hearing issues.

Respectfully submitted,

LISA BURTON
CARMEN (ROBINSON) GONZALEZ
BETTY MAINA
TRACEY MASSAY
OSMISA PEACOCK
KIZZIE SANDERS
ANTHONY SCOTT
DEBORAH MARIA SHEPHERD
MARIA SMITH
GLORIA MARIE MITCHELL TAYLOR
ZELDA TEPPER
PATRICK YOUNG

By



Dennis J. Kelly
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E-mail: cmason@fjl-law.com

DATED: April 29, 2002

DECLARATION

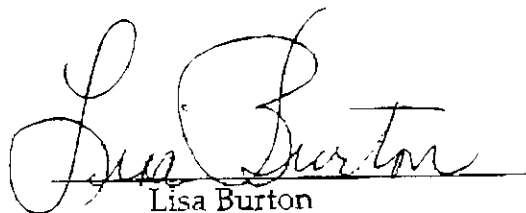
Lisa Burton hereby states as follows:

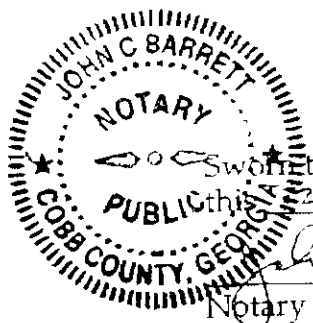
1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American female citizen of the United States of America. I reside at 1205 Natchez Trace, Apartment A, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 15-20 of said Petition, and those facts as stated therein are true to my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2002.


Lisa Burton



Sworn to and subscribed before me
this 22 day of April, 2002.


Notary Public

My commission expires: March 13, 2006

JOHN C. BARRETT
Notary Public, Cobb County, Georgia
My Commission Expires March 13, 2006

DECLARATION

Carmen (Robinson) Gonzalez hereby states as follows:

1. I am one of the Petitioners in the foregoing "Petition to Deny". I am a Hispanic American female citizen of the United States of America. I resided at 1305 Natchez Trace, Apartment D, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries), during the period commencing February 24, 2001 and ending in early 2002. I now reside in the State of New Jersey.


2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 21-28 of said Petition, and those facts as stated therein are true to my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 20th, 2002.


Carmen Gonzalez

Sworn to and subscribed before me
this 20th day of April, 2002.


Notary Public

My commission expires: 7/15/2006

DECLARATION

Betty Maina hereby states as follows:

1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American female citizen of the United States of America. I reside at 1228 Natchez Trace, Apartment C, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 29-33 of said Petition, and those facts as stated therein are true to my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2002.



Betty Maina

Sworn to and subscribed before me
this ____ day of April, 2002.

Notary Public

My commission expires: _____

DECLARATION

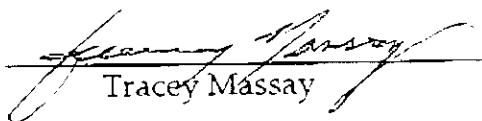
Tracey Massey hereby states as follows:

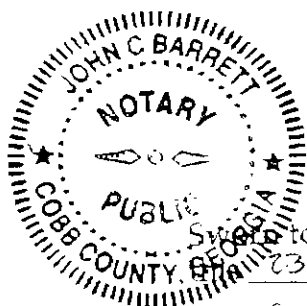
1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American female citizen of the United States of America. I reside at 1354 Natchez Trace, Apartment D, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 34-38 of said Petition, and those facts as stated therein are true to my personal knowledge.

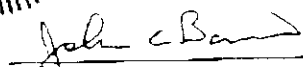
I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 23, 2002.


Tracey Massey



Witnessed to and subscribed before me
on 23 day of April, 2002.


Notary Public

My commission expires: March 13, 2006

JOHN C. BARRETT
Notary Public, Cobb County, Georgia
My Commission Expires March 13, 2006

DECLARATION

Osmisa Peacock hereby states as follows:

1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American female citizen of the United States of America. I reside at 2300 Hidden Glen Drive, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 39-42 of said Petition, and those facts as stated therein are true to my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April ____, 2002.

Osmisa Peacock

Sworn to and subscribed before me
this ____ day of April, 2002.

Notary Public

My commission expires: _____

DECLARATION

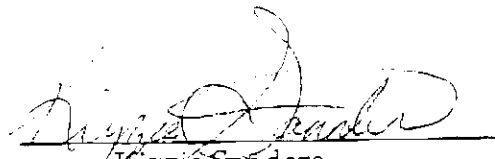
Kizzie Sanders hereby states as follows:

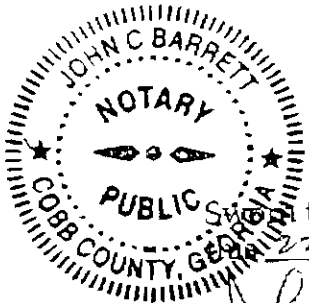
1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American female citizen of the United States of America. I reside at 1852 Hidden Glen Drive, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 43-46 of said Petition, and those facts as stated therein are true to my personal knowledge.


I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2002.


Kizzie Sanders



Signed to and subscribed before me
on 22 day of April, 2002.


Notary Public

My commission expires: March 13, 2006

JOHN C. BARRETT
Notary Public, Cobb County, Georgia
My Commission Expires March 13, 2006

DECLARATION

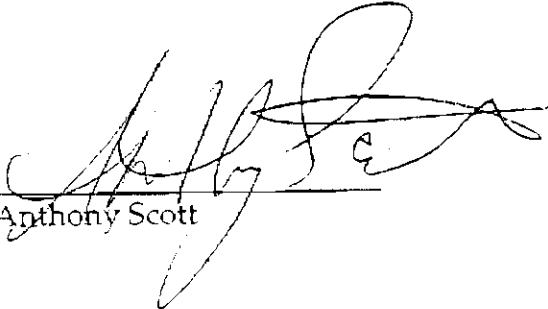
Anthony Scott hereby states as follows:

1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American male citizen of the United States of America. I reside at 1228 Natchez Trace, Apartment B, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

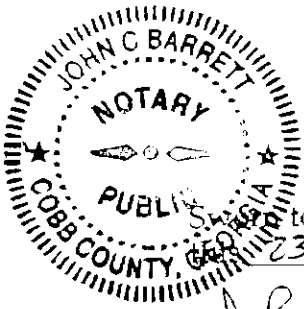
2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 47-49 of said Petition, and those facts as stated therein are true to my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

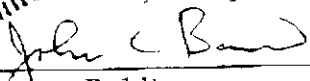
Executed on April 23 2002.



Anthony Scott



to and subscribed before me
on the 23 day of April, 2002.



Notary Public

My commission expires: March 13, 2006

JOHN C. BARRETT
Notary Public, Cobb County, Georgia
My Commission Expires March 13, 2006

DECLARATION

Deborah Maria Shepherd hereby states as follows:

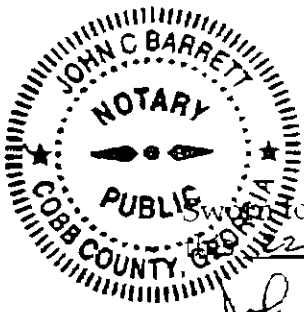
1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American female citizen of the United States of America. I reside at 1205 Natchez Trace, Apartment C, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 50-56 of said Petition, and those facts as stated therein are true to my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 2nd, 2002.

Deborah Maria Shepherd
Deborah Maria Shepherd



Sworn to and subscribed before me
on the 2nd day of April, 2002.

John C. Barrett
Notary Public

My commission expires: March 13, 2006

JOHN C. BARRETT
Notary Public, Cobb County, Georgia
My Commission Expires March 13, 2006

DECLARATION

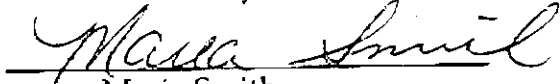
Maria Smith hereby states as follows:

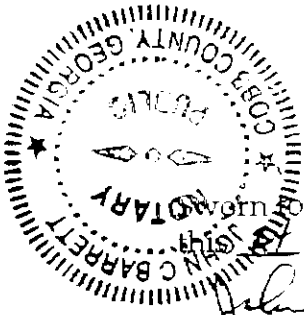
1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American female citizen of the United States of America. I reside at 2086 Hidden Glen Drive, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 57-61 of said Petition, and those facts as stated therein are true to my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2002.


Maria Smith



Sworn to and subscribed before me
this 24 day of April, 2002.


Notary Public

My commission expires: March 13, 2006

JOHN C BARRETT
Notary Public, Cobb County, Georgia
My Commission Expires March 13, 2006

DECLARATION

Gloria Marie Mitchell Taylor hereby states as follows:

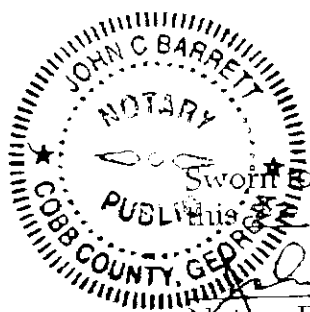
1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American female citizen of the United States of America. I reside at 1221 Natchez Trace, Apartment A, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 62-68 of said Petition, and those facts as stated therein are true to my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2002.

Gloria Marie Mitchell Taylor
Gloria Marie Mitchell Taylor



Sworn to and subscribed before me
this 22 day of April, 2002.

John C. Barrett
Notary Public

My commission expires: March 13, 2006

JOHN C. BARRETT
Notary Public, Cobb County, Georgia
My Commission Expires March 13, 2006

DECLARATION

Zelda Tepper hereby states as follows:

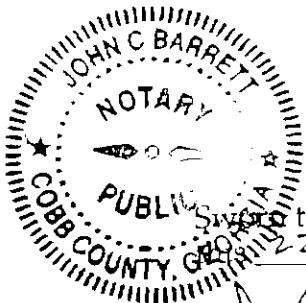
1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American female citizen of the United States of America. Between October, 1999 and July, 2001, I resided at 1846 Hidden Glen Drive, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries). I currently reside at an apartment complex located on Delk Road in Marietta, Cobb County, Georgia.

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 69-72 of said Petition, and those facts as stated therein are true to my personal knowledge.

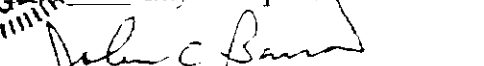
I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2002.


Zelda Tepper



Sworn to and subscribed before me
on the 22 day of April, 2002.


Notary Public

My commission expires: March 13, 2006

JOHN C. BARRETT
Notary Public, Cobb County, Georgia
My Commission Expires March 13, 2006

DECLARATION

Patrick Young hereby states as follows:

1. I am one of the Petitioners in the foregoing "Petition to Deny". I am an African American male citizen of the United States of America. I reside at 2306 Hidden Glen Drive, Marietta, Cobb County, Georgia, a location which is passed by the cable television lines of AT&T Corporation (or one of its subsidiaries).

2. I have carefully reviewed, and I hereby subscribe to the foregoing Petition to Deny. I have personal knowledge of the facts stated in paragraphs 73-77 of said Petition, and those facts as stated therein are true to my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

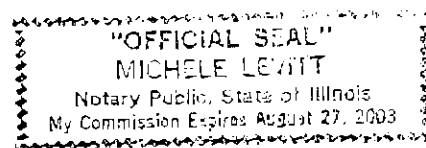
Executed on April 23, 2002.

Patrick Young
Patrick Young

Sworn to and subscribed before me
this 23rd day of April, 2002.

Michele Levitt
Notary Public

My commission expires: 8/27/03



**BROADBAND****Broadband Sales Order Form**

EXHIBIT M

AT&T Broadband Service Order Form

Name Danisa Peacock SSN 260-45-3796

Address 2300 HODGEN BLVD Apt# 2300

City ATLANTA GA Zip Code 30067

Telephone Number (Home) 770-456-8467 Work _____

SERVICES ORDERED

Service	Quantity	Charge
Basic I		\$
Basic II		\$ <u>38.00</u>
MediaVue 1, 2, 3 or 4		\$
Digital Platinum		\$
Digital Gold		\$
Digital Silver		\$
Digital Bronze		\$
Sports Information-Bonus Pack		\$
Family & Variety-Bonus Pack		\$
Movie & Music-Bonus Pack		\$
Latino-Bonus Pack		\$
A/O		\$
Other Services		\$
Monthly Service Fee		\$
Installation Fee (One Time)		\$
Total		\$

TELEPHONE	
RightPak	\$
RightPak Plus	\$
RightPak II	\$
() 900/976 Call Block	
() Distinctive Ring	
() Speed Call 8	30
Federal Access Charge	
1st Line - \$4.35	\$
Each Additional Line \$6.95	\$
TRS	\$
Monthly Service Fee	\$
Installation (one time)	\$
Total:	\$

INTERNET	
Monthly Service Fee	Charge
Cable Customer	\$
Non-Cable Customer	\$
Installation Fee (one time)	\$
Interface Card	
Desktop	\$
Laptop	\$
Total:	\$

Total Charge For All Services: \$

All applicable fees and taxes will be applied.

Amount Paid \$ 20.00Cash ☒ Check ☐ MC/Visa ☐ AmEx ☐

Amount Due \$

Additional Comments: Special Rate of 19.95 Until
END of 2001 / There is NO WAY THIS PERSON COULD
have had cable prior TO TODAY I HAD TO RUN A NEW LINE IN ORDER TO hook up

(Complete for telephone service only) T/O=1

TAG# D8735569 secv.

Telephone Information:

Current Long Distance Carrier _____ () Pic Freeze ☒ Current Telephone Number _____

CURRENT LOCAL TELEPHONE PROVIDER: _____

Listing Information: Directory Listing ☒ (Check One) () Published () Unlisted () Non-Published

Current Directory Listing (Name): _____

WRITE YOUR NAME as you would like it to appear in Directory: _____

Connection Date: <u>8/5/01</u>	Time of Day: _____
Customer Signature <u>ADAM JACOB</u>	Date <u>8/5/01</u>
Sales Representative	Representative # <u>2032</u>

☒ These items must be completed before processing.

526153

EXHIBIT N

1305 Natchez Trace Apt D
MARIETTA, GA 30008
CARMEN H. ROBINSON 64-713372611 167
3878 GLENHURST DRIVE
SMYRNA, GA 30089
DATE 3/8/01
AT&T Cable Broadband \$ 40.45
Forty 45/100
404-663-1588
DIRECT A
ASSOCIATED
& FEDERAL
Employees Credit Union
Atlanta, Georgia
Carmen H. Robinson

0055252725 03/16/2001 005 25 6

15 01

BANK OF AMERICA, N.A. ATL
12610000524 03/15/01
000000000000 03/15/01

0000423333

PAY TO THE ORDER OF
BANK OF AMERICA
CUSTOMER SERVICE
0126 FOR DEPOSIT ONLY
MEMO ONE
REF: AT&T BROADBAND
LOCATION 4923
6750235863

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Petition to Deny" were served by either first-class United States mail, postage prepaid, or by e-mail, as indicated below, on this 29th day of April, 2002, upon the following:

Mark C. Rosenblum, Esquire*
Stephen C. Garavito, Esquire
AT&T CORP.
Room 1131M1
295 North Maple Avenue
Basking Ridge, NJ 07920

Stanley L. Wang, Esquire*
Joseph W. Waz, Jr., Esquire
COMCAST CORPORATION
1500 Market Street
Philadelphia, PA 19102

Douglas Garrett, Esquire*
James H. Bolin, Jr., Esquire
AT&T BROADBAND, LLC
188 Inverness Drive West
Englewood, CO 80112

James R. Coltharp, Esquire*
COMCAST CORPORATION
2001 Pennsylvania Avenue, NW
Suite 500
Washington, DC 20006

Steven J. Horwitz, Esquire*
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, NW, Suite 200
Washington, DC 20006-9750
Counsel for AT&T Corporation

David Lawson, Esquire*
Sidley Austin Brown & Wood LLP
1501 K Street, NW
Washington, DC 20005
Counsel for AT&T Corporation and AT&T Broadband Corp.

Michael H. Hammer, Esquire*
Willkie Farr & Gallagher
Three Lafayette Centre
1155 - 21st Street, NW
Washington, DC 20036-3384
Counsel for AT&T Corporation

A. Renee Callahan, Esquire*
A. Richard Metzger, Jr., Esquire
Lawler, Metzger & Milkman, LLC
1909 K Street, NW, Suite 820
Washington, DC 20006
Counsel for Comcast Corporation

James L. Casserly, Esquire*
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
Counsel for Comcast Corporation

Linda Senecal, Esquire+
Industry Analysis Division
Media Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-C438
Washington, DC 20554

Qualex International+
Portals II, 445 12th Street, SW, Room CY-B402
Washington, DC 20554

Roger Holberg, Esquire+
Media Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-C262
Washington, DC 20554

Erin Dozier, Esquire+
Media Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-C221
Washington, DC 20554

Mr. David Sappington+

Chief Economist
Office of Plans and Policy
Federal Communications Commission
445 12th Street, SW, Room 7-C452
Washington, DC 20554


James Bird, Esquire+
Office of General Counsel
Federal Communications Commission
445 12th Street, SW, Room 8-C824
Washington, DC 20554

Mr. Donald Stockdale+
Office of Plans and Policy
Federal Communications Commission
445 12th Street, SW, Room 7-C324
Washington, DC 20554

William Dever, Esquire+
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C266
Washington, DC 20554

Cynthia Bryant, Esquire+
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-C807
Washington, DC 20554

Jeff Tobias, Esquire+
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-C828
Washington, DC 20554


Dennis J. Kelly

*By U. S. Postal Service
+By e-mail